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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
|-----------------|-------------|----------------------|---------------------|

09/715,035 11/20/00 MOCKEL

B P 274441 990

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HM22/1109

EXAMINER

FRONDA, C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1652  
DATE MAILED:

11/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.  
09/715,035

Applicant(s)

Mockel et al.

Examiner  
Christian L. FrondaArt Unit  
1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on \_\_\_\_\_

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-19 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims 1-19 are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892)      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, drawn to an isolated polynucleotide from coryneform bacteria, classified in class 536, subclass 23.2.
  - II. Claims 8, 9, 12, 13, and 17, drawn to a process for the fermentative production of L-amino acids using coryneform bacteria in which at least the pfkA gene is amplified, classified in class 435, subclass 115.
  - III. Claims 8, 10, 13, and 17, drawn to a process for the fermentative production of L-amino acids using coryneform bacteria in which at least the pfkA gene is amplified and genes of the biosynthetic pathway of the desired L-amino acid are additionally amplified, classified in class 435, subclass 115.
  - IV. Claims 8, 11, 13, 16, and 17, drawn to a process for the fermentative production of L-amino acids using coryneform bacteria in which at least the pfkA gene is amplified and the metabolic pathways which reduce the formation of L-lysine are at least partially suppressed, classified in class 435, subclass 115.
  - V. Claims 8, 14, 15, and 17, drawn to a process for the fermentative production of L-amino acids using coryneform bacteria in which at least the pfkA gene is amplified and one or more genes selected from the group consisting of dapA, pyc, tpi, dapE, gap, pgk, and lysE are simultaneously amplified, classified in class 435, subclass 115.
  - VI. Claim 18, drawn to a process for the production of DNA of gene which encode phosphofructokinase, classified in class 435, subclass 91.2.
  - VII. Claim 19, drawn to a hybridization probe, classified in class 536, subclass 24.3.
2. The inventions are distinct, each from the other because of the following reasons:  
Inventions of Groups II-VII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). The processes of Groups II-VII are distinct both physically and functionally and require different process steps,

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reagents, and parameters.

The invention of Group I is unrelated to the inventions of Groups II-VII. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). Each of the processes of Groups II-VII do not require the product of Group I.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. Claims 14 and 16 are generic to a plurality of disclosed patentably distinct species. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

If Group IV (claims 8, 11, 13, 16, and 17) is elected, then Applicants are required to elect the pck gene or pgi gene for examination.

If Group V (claims 8, 14, 15, and 17) is elected, then Applicants are required to elect one gene selected from the group consisting of dapA, pyc, tpi, dapE, gap, pgk, and lysE for examination.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L. Fronda whose telephone number is (703)305-1252. If attempts

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to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703)308-3804. The fax phone number for this Group is (703)308-0294. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703)308-0196.

CLF



PONNATHAPUACHUTAMURTHY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600